



Amendment No. 6
to
Contract No. NA190000123
for
Economic Analysis Consulting Services
between
ECONOMIC & PLANNING SYSTEMS INC
and the
City of Austin, Texas

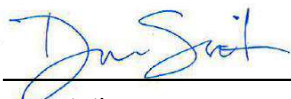
- 1.0 The City hereby amends the above referenced contract to revise and add to the Scope of Work (SOW) Exhibit A5.
- 2.0 The total contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 4/16/19 – 4/15/22	\$600,000.00	\$600,000.00
Amendment No. 1: Revision of SOW 4/26/19	\$0.00	\$600,000.00
Amendment No. 2: Revision of SOW and Contract Increase 8/9/19	\$200,000.00	\$800,000.00
Amendment No. 3: Revision of SOW 10/31/19	\$0.00	\$800,000.00
Amendment No. 4: Revision of SOW and Contract Increase 04/02/2020	\$14,257.00	\$814,257.00
Amendment No. 5: Contract Increase 09/03/2020	\$46,743.00	\$861,000.00
Amendment No. 6: Revision of SOW and Contract Increase 12/22/2020	\$62,000.00	\$923,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment, the City of Austin confirms that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:



Printed Name: _____

Authorized Representative

Economic & Planning Systems Inc
1330 Broadway, Suite 450
Oakland, CA 94612 US
dsmith@epsys.com

Signature & Date:

Cyrenthia Ellis

Digitally signed by Cyrenthia Ellis
DN: cn=Cyrenthia Ellis, o=City of Austin,
ou=Procurement Office,
email=Cyrenthia.Ellis@austintexas.gov, c=US
Date: 2020.12.31 16:24:22 -0600

Cyrenthia Ellis, Procurement Manager
City of Austin Purchasing Office

Exhibit A5 – Economic & Planning Systems Inc Proposal (Ryan Drive 08/31/2020, St. John 08/28/2020, Mueller 02/26/2020)

August 31, 2020

Jill Fagan
City of Austin, Economic Development Department

Sent via email to: Jill.Fagan@austintexas.gov

Subject: Proposal for Ryan Drive Solicitation Support; EPS #191067

Dear Jill:

Thank you for your interest in retaining Economic & Planning Systems (EPS) to assist the City in soliciting and selecting a preferred developer partner for the 6909 Ryan Drive property. As you know, EPS has led a multi-disciplinary team conducting analysis and community engagement regarding the site's development potential and community-driven objectives. As of the end of July 2020, the EPS Team had expended all but roughly \$8,400 of our original budget for the Ryan Drive study. Below, we describe the additional services we believe are required for the successful solicitation, selection, and negotiation of a development agreement for the site.

Proposed Scope of Services

Task 1: Solicitation Documents

EPS has provided an initial draft of a Request for Proposals (RFP) for the site's development, including language regarding the project objectives, site context, proposal instructions, desired developer qualifications, evaluation criteria, and the selection process. Working with EDD and procurement staff, EPS will continue to review and recommend edits to the drafts of the RFP, based on our experience with similar solicitations and our understanding of the specific goals and conditions affecting the Ryan Drive site and solicitation process. This task can be undertaken within the budget remaining on the EPS Team's initial contract for Ryan Drive, and thus does not require a budget amendment.

Task 2: Participate in RFP Pre-Submittal Meeting

After City issuance of the RFP, EPS will participate in a supporting role at procurement staff's RFP pre-submittal meeting, which is expected to be conducted online. This meeting for interested developers will introduce the Ryan Drive development opportunity and provide a venue to answer questions about the offering. EPS will participate by helping the City to anticipate and answer questions at the meeting, as well as drafting written responses to financial questions submitted during the meeting. This task can be undertaken within the budget remaining on the EPS Team's initial contract for Ryan Drive, and thus does not require a budget amendment.

The Economics of Land Use



*Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612
510 841 9190 tel
510 740 2080 fax*

*Oakland
Sacramento
Denver
Los Angeles*

www.epsys.com

Task 3: Conduct RFP Pre-Submittal Correspondence

City's Purchasing staff will establish protocols for receiving and responding to inquiries during the RFP response preparation period, and EPS will be available during this period for assisting in preparing replies. EPS assumes that Purchasing staff will serve as the primary recipient and distributor of questions and answers. This task can be undertaken within the budget remaining on the EPS Team's initial contract for Ryan Drive, and thus does not require a budget amendment.

Task 4: Evaluate RFP Responses

EPS will assist in preparing an evaluation of the RFP submissions, and will document the evaluations on a comparable and objective basis. As a part of this task, EPS and City staff will evaluate the developer responses based on a clearly defined set of criteria, obtain supplemental information as needed, and provide a concise summary of the analysis. In particular, EPS will be responsible for reviewing developers' financial assumptions and offers, and corporate financial statements that may be provided, though we will also review the proposals in their entirety. EPS will prepare a summary matrix of our findings. EPS's budget for this task is **\$10,000**, which assumes that up to six proposals will be received and deemed to be responsive by the Purchasing Department and thus subject to review. If more than six proposals are received and deemed responsive, EPS may request an amendment to this budget. EPS does not anticipate any travel to Austin under this task.

Task 5: Preferred Developer Selection Meetings and Interviews

The preferred developer candidate will be selected based on their qualifications as well as their business plan for implementation of the project. This plan will include anticipated financing, estimates of cost, revenues, cash flow, development program and sequencing, as well as the approach to and offering of affordable housing and additional community benefits. The plans will be evaluated by a multi-disciplinary team of City staff. EPS will participate as a resource to and/or part of the evaluation team, offering objective and comparable feedback, and facilitating questions.

EPS will participate in up to two days of meetings in Austin for the developer selection process, including meeting with the selection panel, identifying information gaps or issues in proposals that warrant clarification, and participating in interviews with developer candidates. EPS will prepare interview questions in advance with City staff and provide new questions as may be appropriate during the interviews themselves. The interview panel will document the performance and responses of the candidates during the interviews and incorporate the evaluations into a final ranking of developer candidates. EPS's budget for this task is **\$10,000**.

Task 6: Communication with Elected Officials and Stakeholders

The Ryan Drive property has been of great interest to the City Council and City Manager's Office. EPS anticipates that it will be important to present clear communications to City leaders regarding the solicitation process and results, and will be available to assist in both preparing and delivering these communications at the City's request. In addition to the in-person meetings included in tasks above, at the request of City staff, EPS will be available to participate in up to two (2) meetings with City staff and/or elected officials to discuss the developer solicitation process and findings, and other aspects of the implementation of the Ryan Drive project. The timing, purpose, and content of these meetings will be determined by City staff as the solicitation process evolves. EPS's budget for this task is **\$5,000** and includes EPS's costs for preparation and participation in these meetings, as well as travel expenses as necessary.

Tasks 1 through 6 above are intended to result in the selection of a preferred developer partner for the Ryan Drive property. Assuming that process is successful, the City will then enter into a period of negotiations with the selected developer. In our experience, the process of agreeing to terms on the design, programming, financing, phasing, entitlement, and construction of the project may take several years. Our tasks described below assume that this negotiation period would occur relatively quickly—completed just 18 months from the time of the official action to select a preferred developer. EPS is optimistic that this timeframe will be adequate, given the scale and nature of the expected development and the support and objectives already engendered through the community engagement process.

Task 7: Exclusive Negotiation Agreement (ENA)

EPS will assist the City and its preferred legal counsel to draft an ENA, specifying the terms of the exclusive right to negotiation on the acquisition and development of the site. The agreement will specify the term and extension rights, deposits and cost recovery requirements, tasks to be completed by the parties, key representatives of the parties to participate in the negotiations, indemnification, and any other rights, responsibilities and obligations of the parties deemed important to specify as a condition of the exclusive agreement. Negotiation principles can be incorporated into the ENA as appropriate. Typically, there will be some negotiation on the terms of the ENA to reach agreement from both sides. EPS will assist the City in defining and negotiating the terms of the ENA. EPS has assumed that this ENA could be agreed to and approved by the City within three months of the selection of the preferred developer. EPS's budget for this task is **\$12,000** and includes EPS's costs for preparation and participation in these meetings, as well as travel expenses as necessary for up to two (2) in-person meetings.

Task Deliverables: Negotiation support on ENA; attendance at meeting(s) as requested

Task Timing: Months 1-3 after developer selection

Task 8: Negotiate Disposition

Following execution of an ENA, the developer and the City will continue planning and negotiation of a Master Development Agreement (MDA), ground lease, and/or other documents related to the disposition and development of the Ryan Drive site. This process tends to be iterative rather than linear, with issues emerging that at times require the parties to revisit earlier assumptions or agreements. As we have done with other Austin assignments for negotiation support, we propose to work with the City to establish an overarching budget to draw upon for such work rather than one that is task-specific, so that the City and EPS have the flexibility to respond to issues as they emerge organically through the planning and negotiation process without needing to receive formal authorization or contract amendments that can take time and be inefficient.

Task 8.1. Due Diligence

In this task, both the developers and the City team (including EPS) will undertake tasks to develop more definitive information and analysis to refine the land use and business plans, and to provide a basis for the negotiation of the business terms of the agreement. The first step in this task is to have a meeting between the City team and the developer to define a work program and assign responsibilities for the due diligence efforts, based on a discussion of the plans and the developers' approach to development of the site. The types of tasks that will need to be undertaken by each party may include the following:

Developer Tasks

- A market study that will provide a basis for any refinements to the plan, as well as estimates of phasing, absorption, rents, and comparable land prices.
- Engineering studies to refine site preparation and infrastructure costs.
- Outreach to the community to solicit design/programming input and present preliminary concepts for the project.
- A business plan, including development strategy and phasing, financing, and a pro forma cash flow.

City Team Tasks

- Identify on a preliminary basis key deal parameters and objectives, affordable housing objectives and strategies, financial goals and priorities, and other important outcomes that the City will pursue.
- Define negotiation process and key players, including “Work Group” leaders from the City and potentially other key public agency departments. Determine approach to informing City decision makers and other public agencies, as appropriate.
- Prepare a comprehensive and transparent pro forma cash flow model, or adapt the developer’s pro forma, to serve as a flexible tool for analyzing deal points, and a means of documenting agreed upon assumptions on development program, costs, revenues, financing, phasing and other project characteristics.
- Provide review of planning/engineering documents expected to be produced by the developers’ consulting team. This may require the City’s retention of consultants other than EPS who are qualified in engineering or other disciplines.
- Profile potential public financing mechanisms, their legal requirements, and potential application to the project.

The culmination of the due diligence period will be a revised business plan, including initial proposed business terms. While the developers are typically responsible for developing the revised plans, it is expected that they will work with the City and its consultants in developing the information in the due diligence period, and incorporating that into revised land use plans and business plan proposals. EPS has assumed that this due diligence could be conducted within six (6) months of approval of the ENA.

Task Deliverables: Technical memoranda and economic analysis in support of due diligence; participation in bi-weekly conference calls and/or meetings

Task Timing: Months 4-9 after developer selection

Task 8.2: Negotiate Term Sheet

As a first task of negotiating the legal documents for the transactions, the City team and developer will negotiate a term sheet that spells out the core business and financial terms of the transaction. The term sheet typically defines the land use and development program (including affordable housing and other community benefits), phasing, public and private financing, land take down, land payment, participation, obligations of the parties, and other key elements of the business deal and operational arrangements between the City and the developer over the life of the project. EPS’s role during this period will be to provide strategic guidance and continuing analytical support to the City

to inform the contents of the term sheet, working in coordination with the City's legal counsel. Typically, the term sheet is presented to decision-making bodies—often in closed sessions if allowed under prevailing law—for general deliberation and concurrence before engagement in more formal drafting of legal documents. EPS has assumed that this term sheet could be completed within nine (9) months of approval of the ENA, concurrent with much of the due diligence work described above.

Task Deliverables: Technical memoranda and economic analysis in support of term sheet negotiation; participation in bi-weekly conference calls and/or meetings; attendance at public meetings as requested

Task Timing: Months 4-12 after developer selection

Task 8.3: Negotiate Transactions Documents

After agreement has been reached on the term sheet, the more detailed and formal legal documents that implement the business transactions will be negotiated. This negotiation will involve more detail on how the transactions are executed, including the terms, conditions, and remedies associated with all aspects of the deal; a more detailed financing plan; land use entitlements; and the legal mechanisms to govern the transaction over time. EPS's role during this period will be to provide strategic guidance and continuing analytical support to the City to inform the contents of the transaction documents, working in coordination with the City's legal counsel. Typically, the documents are presented to decision-making bodies—often in closed sessions if allowed under prevailing law—for general deliberation and concurrence before formal action. EPS has assumed that these transaction documents could be completed and presented for formal action within six (6) months of agreement on the term sheet.

Task Deliverables: Negotiation support on transaction documents; participation in bi-weekly conference calls and/or meetings; attendance at public meetings as requested

Task Timing: Months 13-18 after developer selection

Overall Budget

Tasks 1 through 6 are predictable and finite, and are estimated to cost a total of up to **\$25,000** including travel costs. At the completion of those six tasks, the City is likely to have selected a preferred developer partner with whom to engage in further negotiations. EPS estimates that an additional **\$12,000** may be required for EPS's support of the ENA negotiations in Task 7. Based on past efforts for the City of Austin as well as our knowledge of the specific attributes of the Ryan Drive project, EPS estimates that a budget of roughly \$4,000 per month should be adequate for our participation in the negotiations following the execution of an ENA. Applying this monthly figure to the 15 months of due diligence and negotiation following the ENA execution would suggest a budget of **\$60,000** for the Task 8 efforts. EPS requests that the City establish a working budget based on this "draw-down" pace, and EPS will use this budget based on requests for technical analysis, strategic advice, and meetings and communications from the City of Austin. From time to time, the City and EPS may revisit whether the remaining budget appears to be adequate for the expected work, and may seek a budget augmentation if necessary for EPS to complete continuing negotiation support tasks desired by the City. Please note that as with past and ongoing assignments, EPS will endeavor to be efficient in our travel arrangements for this project, scheduling travel to capitalize on other assignments we have in and around Austin to make optimal use of our time and expenses.

Thank you for your consideration of EPS to undertake this interesting and important assignment. If you have any questions or suggestions regarding our proposal or qualifications for this assignment, please contact me at 510-841-9190 or dsmith@epsys.com.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.

A handwritten signature in blue ink, appearing to read 'D. Smith', with a stylized flourish at the end.

Darin Smith
Managing Principal

August 28, 2020

Christine Freundl
City of Austin, Economic Development Department

Sent via email to: Christine.Freundl@austintexas.gov

Subject: Proposal for St. John Solicitation Support; EPS #191067

Dear Christine:

Thank you for your interest in retaining Economic & Planning Systems (EPS) to assist the City in soliciting and selecting a preferred developer partner for the St. John property. As you are aware, EPS has participated in a multi-disciplinary team conducting analysis and community engagement regarding the site's development potential and community-driven objectives. EPS also received a scope and budget amendment to participate in the preparation of solicitation documents for the site, and has been collaborating with EDD and Purchasing staff on finalizing a Request for Proposals under that previously secured budget allocation. Below, we describe the additional services we believe are required for the successful solicitation, selection, and negotiation of a development agreement for the site.

Proposed Scope of Services

Task 1: Participate in RFP Pre-Submittal Meeting

After City issuance of the RFP, EPS will participate in a supporting role at procurement staff's RFP pre-submittal meeting. This meeting for interested developers will introduce the St. John development opportunity and provide a venue to answer questions about the offering. EPS will participate by helping the City to anticipate and answer questions at the meeting, as well as drafting written responses to financial questions submitted during the meeting. This task is currently not anticipated to require EPS travel to Austin, as the meeting may be conducted online. EPS's budget for this task is **\$2,000**.

Task 2: Conduct RFP Pre-Submittal Correspondence

City's Purchasing staff will establish protocols for receiving and responding to inquiries during the RFP response preparation period, and EPS will be available during this period for assisting in preparing replies. EPS assumes that Purchasing staff will serve as the primary recipient and distributor of questions and answers. EPS's budget for this task is **\$3,000**, and does not anticipate that any travel will be required for this task.

The Economics of Land Use



*Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612
510 841 9190 tel
510 740 2080 fax*

*Oakland
Sacramento
Denver
Los Angeles*

www.epsys.com

Task 3: Evaluate RFP Responses

EPS will assist in preparing an evaluation of the RFP submissions, and will document the evaluations on a comparable and objective basis. As a part of this task, EPS and City staff will evaluate the developer responses based on a clearly defined set of criteria, obtain supplemental information as needed, and provide a concise summary of the analysis. In particular, EPS will be responsible for reviewing developers' financial assumptions and offers, and corporate financial statements that may be provided, though we will also review the proposals in their entirety. EPS will prepare a summary matrix of our findings. EPS's budget for this task is **\$8,000**, which assumes that up to four proposals will be received and deemed to be responsive by the Purchasing Department and thus subject to review. If more than four proposals are received and deemed responsive, EPS may request an amendment to this budget. EPS does not anticipate any travel to Austin under this task.

Task 4: Preferred Developer Selection Meetings and Interviews

The preferred developer candidate will be selected based on their qualifications as well as their business plan for implementation of the project. This plan will include anticipated financing, estimates of cost, revenues, cash flow, development program and sequencing, as well as the approach to and offering of affordable housing and additional community benefits. The plans will be evaluated by a multi-disciplinary team of City staff. EPS will participate as a resource to and/or part of the evaluation team, offering objective and comparable feedback, and facilitating questions.

EPS will participate in up to two days of meetings in Austin for the developer selection process, including meeting with the selection panel, identifying information gaps or issues in proposals that warrant clarification, and participating in interviews with developer candidates. EPS will prepare interview questions in advance with City staff and provide new questions as may be appropriate during the interviews themselves. The interview panel will document the performance and responses of the candidates during the interviews and incorporate the evaluations into a final ranking of developer candidates. EPS's budget for this task is **\$10,000**.

Task 5: Communication with Elected Officials and Stakeholders

The St. John property has been of great interest to the City Council and City Manager's Office. EPS anticipates that it will be important to present clear communications to City leaders regarding the solicitation process and results, and will be available to assist in both preparing and delivering these communications at the City's request. In addition to the in-person meetings included in tasks above, at the request of City staff, EPS will be available to participate in up to two (2) meetings with City staff and/or elected officials to discuss the developer solicitation process and findings, and other aspects of the implementation of the St. John project. The timing, purpose, and content of these meetings will be determined by City staff as the solicitation process evolves. EPS's budget for this task is **\$6,000** and includes EPS's costs for preparation and participation in these meetings, as well as travel expenses as necessary.

Tasks 1 through 5 above are intended to result in the selection of a preferred developer partner for the St. John property. Assuming that process is successful, the City will then enter into a period of negotiations with the selected developer. In our experience, the process of agreeing to terms on the design, programming, financing, phasing, entitlement, and construction of the project may take several years. Our tasks described below assume that this negotiation period would occur relatively quickly—completed just 24 months from the time of the official action to select a preferred developer. EPS is optimistic that this timeframe will be adequate, given the scale and nature of the expected development and the support and objectives already engendered through the community engagement process.

Task 6: Exclusive Negotiation Agreement (ENA)

EPS will assist the City and its preferred legal counsel to draft an ENA, specifying the terms of the exclusive right to negotiation on the acquisition and development of the site. The agreement will specify the term and extension rights, deposits and cost recovery requirements, tasks to be completed by the parties, key representatives of the parties to participate in the negotiations, indemnification, and any other rights, responsibilities and obligations of the parties deemed important to specify as a condition of the exclusive agreement. Negotiation principles can be incorporated into the ENA as appropriate. Typically, there will be some negotiation on the terms of the ENA to reach agreement from both sides. EPS will assist the City in defining and negotiating the terms of the ENA. EPS has assumed that this ENA could be agreed to and approved by the City within four months of the selection of the preferred developer. EPS's budget for this task is **\$14,000** and includes EPS's costs for preparation and participation in these meetings, as well as travel expenses as necessary for up to two (2) in-person meetings.

Task Deliverables: Negotiation support on ENA; attendance at meeting(s) as requested

Task Timing: Months 1-4 after developer selection

Task 7: Negotiate Disposition

Following execution of an ENA, the developer and the City will continue planning and negotiation of a Master Development Agreement (MDA), ground lease, and/or other documents related to the disposition and development of the St. John site. This process tends to be iterative rather than linear, with issues emerging that at times require the parties to revisit earlier assumptions or agreements. As we have done with other Austin assignments for negotiation support, we propose to work with the City to establish an overarching budget to draw upon for such work rather than one that is task-specific, so that the City and EPS have the flexibility to respond to issues as they emerge organically through the planning and negotiation process without needing to receive formal authorization or contract amendments that can take time and be inefficient.

Task 7.1. Due Diligence

In this task, both the developers and the City team (including EPS) will undertake tasks to develop more definitive information and analysis to refine the land use and business plans, and to provide a basis for the negotiation of the business terms of the agreement. The first step in this task is to have a meeting between the City team and the developer to define a work program and assign responsibilities for the due diligence efforts, based on a discussion of the plans and the developers' approach to development of the site. The types of tasks that will need to be undertaken by each party may include the following:

Developer Tasks

- A market study that will provide a basis for any refinements to the plan, as well as estimates of phasing, absorption, rents, and comparable land prices.
- Engineering studies to refine site preparation and infrastructure costs.
- Outreach to the community to solicit design/programming input and present preliminary concepts for the project.
- A business plan, including development strategy and phasing, financing, and a pro forma cash flow.

City Team Tasks

- Identify on a preliminary basis key deal parameters and objectives, affordable housing objectives and strategies, financial goals and priorities, and other important outcomes that the City will pursue.
- Define negotiation process and key players, including “Work Group” leaders from the City and potentially other key public agency departments. Determine approach to informing City decision makers and other public agencies, as appropriate.
- Prepare a comprehensive and transparent pro forma cash flow model, or adapt the developer’s pro forma, to serve as a flexible tool for analyzing deal points, and a means of documenting agreed upon assumptions on development program, costs, revenues, financing, phasing and other project characteristics.
- Provide review of planning/engineering documents expected to be produced by the developers’ consulting team. This may require the City’s retention of consultants other than EPS who are qualified in engineering or other disciplines.
- Profile potential public financing mechanisms, their legal requirements, and potential application to the project.

The culmination of the due diligence period will be a revised business plan, including initial proposed business terms. While the developers are typically responsible for developing the revised plans, it is expected that they will work with the City and its consultants in developing the information in the due diligence period, and incorporating that into revised land use plans and business plan proposals. EPS has assumed that this due diligence could be conducted within eight (8) months of approval of the ENA.

Task Deliverables: Technical memoranda and economic analysis in support of due diligence; participation in bi-weekly conference calls and/or meetings

Task Timing: Months 5-12 after developer selection

Task 7.2: Negotiate Term Sheet

As a first task of negotiating the legal documents for the transactions, the City team and developer will negotiate a term sheet that spells out the core business and financial terms of the transaction. The term sheet typically defines the land use and development program (including affordable housing and other community benefits), phasing, public and private financing, land take down, land payment, participation, obligations of the parties, and other key elements of the business deal and operational arrangements between the City and the developer over the life of the project. EPS’s role during this period will be to provide strategic guidance and continuing analytical support to the City

to inform the contents of the term sheet, working in coordination with the City's legal counsel. Typically, the term sheet is presented to decision-making bodies—often in closed sessions if allowed under prevailing law—for general deliberation and concurrence before engagement in more formal drafting of legal documents. EPS has assumed that this term sheet could be completed within eleven (11) months of approval of the ENA, concurrent with much of the due diligence work described above.

Task Deliverables: Technical memoranda and economic analysis in support of term sheet negotiation; participation in bi-weekly conference calls and/or meetings; attendance at public meetings as requested.

Task Timing: Months 5-15 after developer selection

Task 7.3: Negotiate Transactions Documents

After agreement has been reached on the term sheet, the more detailed and formal legal documents that implement the business transactions will be negotiated. This negotiation will involve more detail on how the transactions are executed, including the terms, conditions, and remedies associated with all aspects of the deal; a more detailed financing plan; land use entitlements; and the legal mechanisms to govern the transaction over time. EPS's role during this period will be to provide strategic guidance and continuing analytical support to the City to inform the contents of the transaction documents, working in coordination with the City's legal counsel. Typically, the documents are presented to decision-making bodies—often in closed sessions if allowed under prevailing law—for general deliberation and concurrence before formal action. EPS has assumed that these transaction documents could be completed and presented for formal action within nine (9) months of agreement on the term sheet.

Task Deliverables: Negotiation support on transaction documents; participation in bi-weekly conference calls and/or meetings; attendance at public meetings as requested

Task Timing: Months 16-24 after developer selection

Overall Budget

Tasks 1 through 5 are predictable and finite, and are estimated to cost a total of up to **\$29,000** including travel costs. At the completion of those six tasks, the City is likely to have selected a preferred developer partner with whom to engage in further negotiations. EPS estimates that an additional **\$14,000** may be required for EPS's support of the ENA negotiations in Task 6. Based on past efforts for the City of Austin as well as our knowledge of the specific attributes of the St. John project, EPS estimates that a budget of roughly \$4,000 per month should be adequate for our participation in the negotiations following the execution of an ENA. Applying this monthly figure to the 20 months of due diligence and negotiation following the ENA execution would suggest a budget of **\$80,000** for the Task 7 efforts. EPS requests that the City establish a working budget based on this "draw-down" pace, and EPS will use this budget based on requests for technical analysis, strategic advice, and meetings and communications from the City of Austin. From time to time, the City and EPS may revisit whether the remaining budget appears to be adequate for the expected work, and may seek a budget augmentation if necessary for EPS to complete continuing negotiation support tasks desired by the City. Please note that as with past and ongoing assignments, EPS will endeavor to be efficient in our travel arrangements for this project, scheduling travel to capitalize on other assignments we have in and around Austin to make optimal use of our time and expenses.

Thank you for your consideration of EPS to undertake this interesting and important assignment. If you have any questions or suggestions regarding our proposal or qualifications for this assignment, please contact me at 510-841-9190 or dsmith@epsys.com.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.

A handwritten signature in blue ink, appearing to read 'D. Smith', with a stylized flourish at the end.

Darin Smith
Managing Principal

February 26, 2020

Pam Hefner
City of Austin, Economic Development Department

Sent via email to: Pam.Hefner@austintexas.gov

Subject: Proposal for Mueller Financial Analysis; EPS #201020

Dear Pam:

Thank you for your interest in retaining Economic & Planning Systems (EPS) to assist with financial analysis for the Mueller redevelopment project. Per our discussions, we understand that the City would like EPS to advise and assist the City with the financial aspects of Mueller and particularly help to plan for the closeout of the Master Development Agreement (MDA) scheduled for December 2, 2024. Specific requests for consulting services include the following:

Task 1: Comfort Letter 21 Amendments

EPS will assist City with negotiation of the financial “waterfall” associated with the Amended and Restated Comfort Letter 21 regarding the Takedown of remaining Town Center property, with specific concerns regarding the distribution of land sale proceeds for any remaining Town Center parcels sold after December 31, 2021

EPS anticipates that this task will involve a review of Comfort Letter 21 and relevant portions of the MDA, discussions with City and developer representatives regarding initial and evolving waterfall concepts, financial modeling of alternative waterfall structures based on anticipated inputs (Project Costs, land values, etc.), and editorial contributions to another amended Comfort Letter 21.

EPS anticipates that this effort may require a budget not to exceed \$12,000, including \$3,000 in Fiscal Year 2020 and \$9,000 in Fiscal Year 2021.

Task 2: MDA Subsequent Lookback

MDA Section 5.5(b) Subsequent Lookback states that Catellus shall produce a “Subsequent Lookback Proforma” around the time that 75 percent of the Backbone Infrastructure is complete. The proforma shall include actual Project Costs and Project Revenues to date, as well as those projected through the completion of the project or expiration of the MDA. EPS will work with the developer and City staff to agree to a format for the proforma, review the developer’s initial draft proforma for consistency with the format as well as past “books and records” submitted to the City. EPS will work with the parties to ascertain the financial position of the overall project, including developer and City contributions and returns to date and as projected. This

The Economics of Land Use



Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612
510 841 9190 tel
510 740 2080 fax

Oakland
Sacramento
Denver
Los Angeles

www.epsys.com

effort will require coordination discussions with the City and developer, review of materials including an active Excel-based proforma to be provided by the developer as well as past books and records, and documentation of conclusions including both the financial proforma and any observations and recommendations regarding current Mueller auditing procedures and any recommended revisions to such procedures.

EPS anticipates that this effort may require a budget not to exceed \$16,000, including \$6,000 in Fiscal Year 2020 and \$10,000 in Fiscal Year 2021.

Task 3: Final Lookback Workplan

MDA Section 5.5(c) Final Lookback states that at the completion of the project (either final land sale or expiration), the developer shall update the "Subsequent Lookback Proforma" described in Task 2 above and provide a "Final Lookback Proforma" that includes all Project Costs and Revenues as well as the calculation of the developer returns and the City's financial participation through the waterfall. While that Final Lookback process may not occur for several years, it is important that the City and developer plan ahead to ensure that the required information is available and process is understood when the Final Lookback occurs. EPS will work with the City and developer to define a workplan (with responsibilities and timelines) for the various efforts required to enable the Final Lookback, including without limitation the preparation of required books and records as well as resolution of parking garage ownership, resolution of Town Center takedown waterfall, and the POA proforma closeout. This effort will require a review of the MDA and associated comfort letters, discussions with City staff and developer representatives, and documentation of the proposed workplan.

EPS anticipates that this effort may require a budget not to exceed \$15,000, all of which would be expected in Fiscal Year 2021.

Task 4: POA Strategy

EPS understands that the Mueller Property Owners Association (POA) will be undergoing changes as the Mueller development nears completion, with the developer's role being reduced and other property owners taking greater control. EPS will review available summaries of the POA expenditures and revenues to date to understand how the POA activities have been funded, highlighting any funding that has come from sources other than the ongoing property owners. To the extent that POA activities have received such external funds, it may be important to establish funding resources for future expenditures beyond what the ongoing property owners can reasonably incur. EPS will explore the potential type and scale of such resources and prepare a realistic financing plan, as well as other best practices from comparable large-scale developments that may inform the process for transferring control of the POA from Catellus to POA members.

EPS anticipates that this effort may require a budget not to exceed \$20,000, all of which would be expected in Fiscal Year 2021.

Task 5: Parking Garage Strategy

The City and Catellus have executed several documents regarding the development and operation of Town Center Parking Garages (collectively, "Comfort Letter 22"). If requested by the City, EPS will be available to assist in reviewing those documents, proforma and cash flow documents, and other relevant information that may affect decisions regarding the ownership and operation of the Town Center Parking Garages. EPS currently anticipates that this task will not commence until Fiscal Year 2022, and per City instruction will await further definition of the task before providing a budget estimate.

Thank you for your consideration of EPS to undertake these important assignments. If you have any questions or suggestions regarding our proposal for this assignment, please contact me at 510-841-9190 or dsmith@epsys.com.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.

A handwritten signature in blue ink, appearing to read "D. Smith", with a stylized flourish at the end.

Darin Smith
Managing Principal



Amendment No. 4
to
Contract No. NA190000123
for
Economic Analysis Consulting Services
between
ECONOMIC & PLANNING SYSTEMS INC
and the
City of Austin, Texas

- 1.0 The City hereby amends the above referenced contract to revise and add to the Scope of Work (SOW) Exhibit A4.
- 2.0 The contract is hereby increased by \$14,257.00
- 3.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 4/16/19 – 4/15/22	\$600,000.00	\$600,000.00
Amendment No. 1: Revision of SOW 4/26/19	\$0.00	\$600,000.00
Amendment No. 2: Revision of SOW and Contract Increase 8/9/19	\$200,000.00	\$800,000.00
Amendment No. 3: Revision of SOW 10/31/19	\$0.00	\$800,000.00
Amendment No. 4: Revision of SOW and Contract Increase 04/02/2020	\$14,257.00	\$814,257.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 9.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:



04/07/2020

Printed Name: DARIN SMITH
Authorized Representative

Signature & Date:



Lynnette Hicks, Procurement Specialist IV
City of Austin Purchasing Office

Economic & Planning Systems Inc
One Kaiser Plaza
Oakland, CA 94612 US

Exhibit A4- Economic & Planning Systems Inc Proposal dated 01/12/2020

EXHIBIT A4

January 12, 2020

Mark Gilbert
Economic Development Department
City of Austin

Subject: Revised Scope for Site Planning for Developable City Surplus
Property at St. Johns; EPS #191042

Dear Mr. Gilbert:

On behalf of our assembled multi-disciplinary consulting team, Economic & Planning Systems, Inc. (EPS) appreciates the opportunity to present this proposal to assist the City of Austin in exploring opportunities and strategies for the development of Developable City Surplus Property. As you know, the EPS Team is already under contract to assist in this planning effort, providing supportive analysis and peer review for work being conducted primarily by a team from the University of Texas ("the UT Team"). Per your request, EPS has prepared this document to describe additional services that our team can provide to take the results of the UT Team's planning efforts and create solicitation materials intended to attract a qualified developer partner for the City.

On the attached Scope of Work, we have replicated our currently approved work program (Phases 1 through 4 – we are currently conducting Phase 3 tasks) and added a "Phase 5" that describes the tasks we envision will be required to produce a top-quality developer solicitation. We have also attached a revised budget proposal reflecting the expected costs to provide the additional services requested.

For this assignment, we understand that the City intends to utilize EPS's existing on-call contract for consulting services to the Economic Development Department. We look forward to the opportunity to work with you on this important assignment. Please let me know if you have questions or suggestions regarding this revised proposal.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC. (EPS)



Darin Smith
Managing Principal

The Economics of Land Use



Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612-3604
510.841.9190 tel
510.740.2080 fax

Oakland
Sacramento
Denver
Los Angeles

www.epsys.com

SCOPE OF WORK

Phase 1: Project Initiation

This phase is intended to ensure that the City and consultant team share a common understanding of the goals of the study, both in terms of processes and products.

Task 1.1 Review of Background Materials

The EPS Team will review documents provided by the City to ensure that we understand the neighborhood, citywide, and regional context for the site. These documents pertain to a variety of broad policy concerns, such as mobility and economic diversity and displacement, as well as neighborhood-level plans, objectives, and standards. The EPS Team will refer to this background material throughout the study as touchstones for policy and programming objectives for the surplus site.

Task 1.2 Kick-off Meeting and Site Tour

The EPS Team will schedule an all-hands kick-off meeting with the City of Austin, and other stakeholders if deemed appropriate by City staff (e.g., AE, Capital Metro, etc.). The purpose of this meeting will be to discuss and refine, as necessary, the Project's work program and schedule. In addition, the EPS Team will discuss: any additional data needed for the Project and the economic imperatives of the City regarding financial yield from the site's redevelopment. The kick-off meeting will also include a discussion of administrative components of the Project, including the team's communication approach and other protocols.

As part of this project kick-off meeting, the EPS Team and City representatives will conduct a tour of the City surplus property and its surroundings. The EPS Team will request that the City provide access onto the site at this time, and may also request additional access later in the study process.

Phase 1 Meetings:

The EPS Team will conduct one (1) day of initial meetings and site tours with City staff and other stakeholders identified by the City.

Phase 2: Due Diligence

In this task, the EPS Team will catalogue the various existing and expected conditions that will affect the development opportunities for the site. The information will be shared with key stakeholders and in a community setting so that all interested parties can share a common understanding of relevant conditions and considerations.

Task 2.1 Physical Conditions

Civiltude will lead the EPS Team's assessment of the physical conditions affecting the development opportunities for the surplus site. Through document review as well as site visits and communications with staff from the City and/or utility enterprises, Civiltude will review all available information regarding building and soil conditions, environmental remediation needs

related to land or buildings, utility services/capacity and infrastructure locations, recent and expected improvements in the vicinity of the sites that may affect their service levels and development capacity, and similar information. Specifically for utility capacity, Civiltude will thoroughly research all proposed Capital Improvements Projects (CIP) and Service Extension Requests (SER) that may affect or benefit the site. Civiltude will review land surveys, title research, easements and restrictive covenants (if any) to determine any adverse impacts to the entitlement of the site. The EPS Team currently does not include a land use attorney and will rely on City's counsel as needed.

Based on this available information, Civiltude will compile an inventory of known information as well as any data needs to address uncertainties. To the extent that information can be made available regarding the existing structures and/or the EPS Team will be able to access the buildings' interiors, Civiltude will assess whether the buildings have reuse potential and thus may be considered for incorporation into future development plans for the sites. Civiltude will also provide an estimate of the costs to prepare the site for redevelopment (e.g., to deconstruct existing buildings, remediate environmental conditions, and remove unusable infrastructure and thus have a "clean" site for a new project), based on information known through this exploration.

To the extent that key information remains unknown, Civiltude may recommend additional studies that have not been accounted for in this Scope of Work, and may be conducted through staff resources from the City or utility enterprises, Civiltude, or another entity.

This assessment of physical conditions and related opportunities, constraints, and costs will be important as development scenarios are developed in Phase III. For example, this information will be used to estimate site improvement costs as well as the costs of any off-site infrastructure upgrades that may be required to enhance the development capacity for the site.

Task 2.2 Economic Considerations

EPS will lead the team's assessment of relevant economic conditions, including the following factors:

- **Financial Return Thresholds** – The St. Johns site(s) were acquired under the 2006 Bond Election for a municipal use that is no longer contemplated, and future development of the site would be expected to generate sufficient value to pay off the acquisition costs at a minimum. EPS will work with the City's legal counsel to determine the constraints and targets for these financial returns, and ensure that such expectations are communicated and respected in subsequent site programming efforts.
- **Market Demand Assessment** – EPS will conduct market analysis that highlights the regional and local demand for residential and commercial development of various types (office, retail, and hotel). This assessment will include quantitative factors such as population and employment growth patterns and projections, the pace of recent development, the amount of development already in the construction pipeline, vacancy rates, achievable rents locally and relative to other areas of the City, and building and land sale prices. EPS will also consider qualitative factors such as the site's accessibility, visibility, adjacencies, and developability relative to other potentially developable sites within a reasonable trade area, as well as the characteristics of potential occupants of new development on each site (e.g., medical office vs. standard office, convenience vs.

destination retail, housing for families vs. students vs. seniors, etc.). From this information, EPS will characterize the demand for various uses around the surplus site, and assess whether the site is in a strong competitive position to absorb such demand relative to other sites and expected projects. Sources for this information will include without limitation: demographic and development reports from the City, Austin Chamber, and similar providers; the Census Bureau and other government departments; regional data from CapCOG and CAMPO; commercially available real estate data (CoStar, broker reports, etc.); the Texas A&M University Real Estate Center; and the Texas Workforce Commission. Each of these data sources will be augmented with on-the-ground analysis and informal discussions with regionally active developers to ensure that EPS's conclusions reflect observable and foreseeable trends.

- **Market-Based Building Values** -- For those uses deemed to be in near- to mid-term demand and consistent with City and community objectives for the surplus site, EPS will estimate the values that may be achieved for such buildings. Using CoStar and other data sources regarding the terms of comparable transactions, EPS will estimate the capitalized values of residential and commercial buildings at market-rate rents. This information on building values can be compared by the UT Team to the estimated costs of construction (to be compiled by the UT Team) and to generate a "residual land value" reflective of the amount a developer could afford to pay for the underlying land while still realizing a market-competitive return on investment. EPS anticipates that these residual land values can be used as initial "building blocks" for the UT Team's consideration of various development scenarios, but that further analysis may occur at a later point to assess whether the per-unit land values may be enhanced or diminished by various attributes of the development scenarios.

Phase 2 Deliverables:

The EPS Team will provide the following deliverables within six (6) weeks of the Kick-off Meeting and Site Tour:

1. Physical Conditions report for the site with not more than twelve (12) pages of written text excluding any appendices;
2. Economic Considerations report for the site, including tables and charts in Excel format and summary PowerPoint.

Phase 3: Scenario Testing

In the third phase, the UT Team will prepare alternative development programs for the site, and evaluate them from a variety of perspectives. The EPS Team will be available to review the UT Team's design and programming concepts and financial analysis, and to provide input on those work products based on our experience with comparable projects. In particular, the EPS Team will be focused on ensuring that the UT Team's process and product yield results that are likely to be understood and attractive to developers in an eventual solicitation for the St. Johns site. The EPS Team has allotted a budget of hours for this review and correspondence, as well as participation in up to one (1) day of meetings with various stakeholders at which the UT Team will lead discussions of site development opportunities.

Task 3.1 Peer Review of UT Team Work Product

EPS and Civiltude will review the interim work product prepared by the UT Team to ensure that it is consistent with our understanding of important data and issues, including site conditions and market conditions. The EPS Team will also provide commentary on the design and programming concepts, financial analysis, implied or explicit implementation strategies, and other attributes of the UT Team's site development scenarios, to ensure they are consistent with best practices or otherwise represent practicable concepts.

Task 3.2 Presentations

EPS and Civiltude will be available to participate in up to one (1) day of presentations to community members, public sector staff, and/or elected officials. The EPS Team currently assumes that these presentations will be coordinated by City staff and/or the UT Team, with our role being to provide commentary regarding the relationship of the UT Team's work to conditions and expectations as we understand them. In this sense, EPS and Civiltude will be serving in a supporting role to EDD and the UT Team.

Phase 3 Deliverables:

The EPS Team will review and provide verbal and written feedback regarding the UT Team's development scenarios and financial analysis. The EPS Team will also participate in up to one (1) day of meetings with stakeholders to discuss the information gathered and provided by our team in the context of the UT Team's work.

Phase 4: Preferred Scenario

In the fourth phase, the UT Team will refine the preferred scenarios as well as explore and recommend implementation strategies. The EPS Team will again be available to provide a peer review function for the UT Team's material, and to participate in public discussions of the opportunities presented under the preferred scenario(s) and implementation plan.

Task 4.1 Peer Review of UT Team Work Product

EPS and Civiltude will review the interim work product prepared by the UT Team to ensure that it is consistent with our understanding of important data and issues, including site conditions and market conditions. The EPS Team will also provide commentary on the design and programming concepts, financial analysis, implied or explicit implementation strategies, and other attributes of the UT Team's site development scenarios, to ensure they are consistent with best practices or otherwise represent practicable concepts.

Task 4.2 Presentations

EPS and Civiltude will be available to participate in up to one (1) day of presentations to community members, public sector staff, and/or elected officials. The EPS Team currently assumes that these presentations will be coordinated by City staff and/or the UT Team, with our role being to provide commentary regarding the relationship of the UT Team's work to conditions and expectations as we understand them. In this sense, EPS and Civiltude will be serving in a supporting role to EDD and the UT Team.

Phase 4 Deliverables:

The EPS Team will review and provide verbal and written feedback regarding the UT Team's development scenarios and financial analysis. The EPS Team will also participate in up to one (1) day of meetings with stakeholders (potentially including City Council) to discuss the information gathered and provided by our team in the context of the UT Team's work.

Phase 5: Solicitation Content

Assuming that the UT Team's work leads to the identification of a preferred scenario or commonly accepted range of scenarios, the EPS Team will work with City staff to develop materials can be incorporated into solicitation documents for developer partners.

Task 5.1 Solicitation and Implementation Strategies

For the preferred scenario(s), EPS will work with UT and City staff to refine the implementation strategies deemed likely to be effective in achieving the desired outcomes, including the targeted financial performance of the land disposition. The group will delineate expected responsibilities for the City (including various departments); partner organizations such as Capital Metro, TxDOT, and utility enterprises; and, of course, the private sector. Such responsibilities may pertain to processes (zoning changes, solicitation efforts, etc.), investments (site preparation, infrastructure, new buildings, etc.), and service enhancements (transit, utilities, etc.). If it is determined that public financing through Tax Increment Reinvestment Zones, Chapter 380 Agreements, bond revenues for various purposes (mobility, affordable housing, etc.), or other sources are required to balance community objectives with financial targets, the nature and scale of such public financing efforts will be described through mutual efforts of EPS, the UT Team, and City staff.

Task 5.2 City Manager and Council Briefings

EPS anticipates that the UT Team and City staff will conduct briefings to inform the City Manager's office and elected officials about the process, results, and consultant recommendations for the redevelopment of the St. Johns site. EPS does not currently anticipate participating directly in those discussions, but will review materials as requested to help ensure that these key decision makers are aware of the potential risks, rewards, and responsibilities that may accrue to the City. To the extent that questions are raised or direction is given in these discussions that may alter the recommended development plans or implementation strategies, such direction will be reflected appropriately in solicitation materials under the subsequent task.

Task 5.3 Solicitation Materials

EPS will work with City staff and the UT Team as appropriate to prepare summary materials for inclusion in solicitation documents (Requests for Qualifications and/or Requests for Proposals) to attract developer partners for the surplus site. This material to be assembled by EPS will include a summary of physical and regulatory conditions, economic considerations, community objectives, preferred development scenarios, and expected or potential roles for various participants in the development and financing of the projects, with reference as appropriate to various studies produced in this assignment or through other means. EPS will also participate in the preparation of complete and final solicitation documents, which will require extensive coordination between the Economic Development Department and Purchasing Office. For

budgeting purposes, EPS assumes that the bulk of the solicitation materials will be prepared by EDD and/or Purchasing staff from the City, but that EPS will help to shape and review solicitation aspects such as the submittal requirements and evaluation criteria. Please also note that this scope of services is proposed to be complete when the solicitation documents are finalized and distributed. If the City elects to engage EPS for further support in the solicitation process – including participation in pre-proposal meetings and site tours, evaluation of developer responses, and assistance in selecting a preferred developer partner – such services will be subject to a scope and budget amendment.

Phase 5 Meetings:

Under Task 5.1, the EPS Team will meet with the City's Project Manager, the UT Team, and other parties as appropriate to review the preferred scenarios and recommended implementation strategies.

EPS's activity under Tasks 5.2 and 5.3 are currently expected to be performed remotely, through telecommunications rather than in-person meetings.

Phase 5 Deliverables:

EPS will provide the following deliverables under Phase 5:

1. Commentary on implementation strategies for the preferred scenario(s) under Task 5.1 within two (2) weeks of the final UT Team community meeting to present and select preferred scenarios (represented under EPS Team Task 4.2)
2. Annotated reviews of presentation materials for the City Manager and Council Briefings under Task 5.2 within a few days of receipt of such materials
3. Summary materials for the solicitation documents under Task 5.3 within three (3) weeks of the completion of the City Manager and Council Briefings; and
4. Continuing support for the completion of the overall solicitation documents as requested by EDD and/or Purchasing staff.

Total Budget

On the following pages, the EPS Team has provided an estimate of the consulting hours and direct expenses expected to be required for each of the tasks described in the Work Program. In sum, the services proposed in this submittal are estimated to require a budget not-to-exceed **\$91,469**. This figure includes \$14,257 for EPS's work under the newly requested "Phase 5" tasks, and thus requires an amendment to our team previously approved maximum contract of \$77,211.

EPS Team

Budget Proposal for Austin Developable City Surplus Land -- St. Johns

EPS Team Total

Phase	Task	Total Budget by Team Member (excluding Direct Expenses)		Combined Consulting Costs	Combined Direct Expenses	Total Costs
		EPS	Civilitude			
Phase 1: Project Initiation						
	Task 1.1 Review of Background Materials	\$2,135	\$1,018	\$3,153	\$100	\$3,253
	<u>Task 1.2 Kick-off Meeting and Site Tour</u>	<u>\$1,932</u>	<u>\$1,417</u>	<u>\$3,350</u>	\$700	<u>\$4,050</u>
	Phase 1 Subtotal	\$4,067	\$2,435	\$6,502	\$800	\$7,302
Phase 2: Due Diligence						
	Task 2.1 Physical Conditions	\$966	\$9,219	\$10,185	\$100	\$10,285
	<u>Task 2.2 Economic Considerations</u>	\$27,689	\$997	\$28,685	\$500	\$29,185
	Phase 2 Subtotal	\$28,655	\$10,215	\$38,870	\$600	\$39,470
Phase 3: Scenario Testing						
	Task 3.1 Peer Review of UT Team Work Product	\$6,849	\$4,567	\$11,416	\$100	\$11,516
	<u>Task 3.2 Presentations</u>	\$2,104	\$1,916	\$4,020	\$650	\$4,670
	Phase 3 Subtotal	\$8,953	\$6,483	\$15,436	\$750	\$16,186
Phase 4: Preferred Scenario						
	Task 4.1 Peer Review of UT Team Work Product	\$4,916	\$4,567	\$9,483	\$100	\$9,583
	<u>Task 4.2 Presentations</u>	\$2,104	\$1,916	\$4,020	\$650	\$4,670
	Phase 4 Subtotal	\$7,021	\$6,483	\$13,503	\$750	\$14,253
Phase 5: Solicitation Content						
	Task 5.1 Solicitation and Implementation Strategies	\$1,932	\$0	\$1,932	\$1,000	\$2,932
	Task 5.2 City Manager and Council Briefings	\$1,492	\$0	\$1,492	\$0	\$1,492
	<u>Task 5.3 Solicitation Materials</u>	\$9,833	\$0	\$9,833	\$0	\$9,833
	Phase 5 Subtotal	\$13,257	\$0	\$13,257	\$1,000	\$14,257
Total		\$61,953	\$25,616	\$87,569	\$3,900	\$91,469

EPS

Budget Proposal for Austin Developable City Surplus Land -- St. Johns

Firm: **Economic & Planning Systems**

Phase	Task	Hours by Staff Member			Consulting Costs	Direct Expenses	Total Costs	
		Name Rate/Hr (1)	Darin Smith \$263.04	Michael Nimon \$220.00				Research Analyst \$101.19
Phase 1: Project Initiation								
	Task 1.1 Review of Background Materials		4	4	2	\$2,135	\$0	\$2,135
	<u>Task 1.2 Kick-off Meeting and Site Tour</u>		<u>4</u>	<u>4</u>	<u>0</u>	<u>\$1,932</u>	<u>\$650</u>	<u>\$2,582</u>
	<i>Phase 1 Subtotal</i>							\$4,717
Phase 2: Due Diligence								
	Task 2.1 Physical Conditions		2	2	0	\$966	\$0	\$966
	<u>Task 2.2 Economic Considerations</u>		<u>32</u>	<u>60</u>	<u>60</u>	<u>\$27,689</u>	<u>\$500</u>	<u>\$28,189</u>
	<i>Phase 2 Subtotal</i>							\$29,155
Phase 3: Scenario Testing								
	Task 3.1 Peer Review of UT Team Work Product		16	12	0	\$6,849	\$0	\$6,849
	<u>Task 3.2 Presentations</u>		<u>8</u>	<u>0</u>	<u>0</u>	<u>\$2,104</u>	<u>\$650</u>	<u>\$2,754</u>
	<i>Phase 3 Subtotal</i>							\$9,603
Phase 4: Preferred Scenario								
	Task 4.1 Peer Review of UT Team Work Product		12	8	0	\$4,916	\$0	\$4,916
	<u>Task 4.2 Presentations</u>		<u>8</u>	<u>0</u>	<u>0</u>	<u>\$2,104</u>	<u>\$650</u>	<u>\$2,754</u>
	<i>Phase 4 Subtotal</i>							\$7,671
Phase 5: Solicitation Content								
	Task 5.1 Solicitation and Implementation Strategies		4	4	0	\$1,932	\$1,000	\$2,932
	Task 5.2 City Manager and Council Briefings		4	2	0	\$1,492	\$0	\$1,492
	<u>Task 5.3 Solicitation Materials</u>		<u>24</u>	<u>16</u>	<u>0</u>	<u>\$9,833</u>	<u>\$0</u>	<u>\$9,833</u>
	<i>Phase 5 Subtotal</i>							\$14,257
Totals			118	112	62	\$61,953	\$3,450	\$65,403

(1) EPS billing rates for 2018-19 were approved by the Capital Contracting Office on 2/13/18 but have not yet been updated for 2019-20.

Civilitude

Budget Proposal for Austin Developable City Surplus Land -- St. Johns

Firm: **Civilitude**

Phase	Task	Hours by Staff Member				Consulting Costs	Direct Expenses	Total Costs	
		Name Rate/Hr	Fayez Kazi \$268.65	Nhat Ho \$229.75	Jim Schissler \$268.65				Eyad Kasemi \$144.92
Phase 1: Project Initiation									
	Task 1.1 Review of Background Materials		1	2	0	2	\$1,018	\$100	\$1,118
	<u>Task 1.2 Kick-off Meeting and Site Tour</u>		<u>1</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>\$1,417</u>	<u>\$50</u>	<u>\$1,467</u>
	Phase 1 Subtotal								\$2,585
Phase 2: Due Diligence									
	Task 2.1 Physical Conditions		8	16	4	16	\$9,219	\$100	\$9,319
	<u>Task 2.2 Economic Considerations</u>		2	2	0	0	\$997	\$0	\$997
	Phase 2 Subtotal								\$10,315
Phase 3: Scenario Testing									
	Task 3.1 Peer Review of UT Team Work Product		4	8	4	4	\$4,567	\$100	\$4,667
	<u>Task 3.2 Presentations</u>		2	6	0	0	\$1,916	\$0	\$1,916
	Phase 3 Subtotal								\$6,583
Phase 4: Preferred Scenario									
	Task 4.1 Peer Review of UT Team Work Product		4	8	4	4	\$4,567	\$100	\$4,667
	<u>Task 4.2 Presentations</u>		2	6	0	0	\$1,916	\$0	\$1,916
	Phase 4 Subtotal								\$6,583
Phase 5: Solicitation Content									
	Task 5.1 Solicitation and Implementation Strategies		0	0	0	0	\$0	\$0	\$0
	Task 5.2 City Manager and Council Briefings		0	0	0	0	\$0	\$0	\$0
	<u>Task 5.3 Solicitation Materials</u>		0	0	0	0	\$0	\$0	\$0
	Phase 5 Subtotal								\$0
Totals			24	53	12	26	\$25,616	\$450	\$26,066



Amendment No. 3
to
Contract No. NA190000123
for
Economic Analysis Consulting Services
between
ECONOMIC & PLANNING SYSTEMS INC
and the
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to revise and add to the Scope of Work (SOW) Exhibit A2.

5.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 4/16/19 – 4/15/22	\$600,000.00	\$600,000.00
Amendment No. 1: Revision of SOW 4/26/19	\$0.00	\$600,000.00
Amendment No. 2: Revision of SOW and Contract Increase 8/9/19	\$200,000.00	\$800,000.00
Amendment No. 3: Revision of SOW 10/31/19	\$0.00	\$800,000.00


6.0 MBE/WBE goals were not established for this contract.

7.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

9.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

 11/4/19
Printed Name: DARIN SMITH
Authorized Representative

Signature & Date:

 11/7/19
Lynette Hicks, Procurement Specialist IV
City of Austin Purchasing Office

Economic & Planning Systems Inc
One Kaiser Plaza
Oakland, CA 94612 US

Exhibit A2- Economic & Planning Systems Inc Proposal dated 10/17/19

Revised 8/4/2014

October 17, 2019

Christine Maguire
City of Austin Economic Development Department
301 W. 2nd Street, Suite 2030
Austin, TX 78701
Sent via email to: Christine.Maguire@austintexas.gov

Subject: Pearson Ranch Annexation Value Proposition; EPS #191111

Dear Christine:

This letter sets forth a proposal for EPS's consulting services to assist the City of Austin in understanding the "value proposition" of potentially annexing the Pearson Ranch property into the City of Austin. The subject property is a 160-acre tract in Williamson County adjacent to lands already within the City's limited or full purpose jurisdictional territory, and is proposed for development as a mixed-use project including residential and commercial buildings. The developer team, led by Inspire Development, has prepared certain documents in support of the annexation request, and EPS will review those materials and conduct additional analysis to assess: 1) whether the project's financial assumptions appear supportable and the project is likely to be successfully developed as envisioned, 2) what advantages may accrue to the City from annexation of the property, and 3) whether certain incentives that the developer may request, such as tax relief, would be worth the City's consideration in light of other benefits that the project may yield to the City.

Proposed Scope of Work

EPS will undertake the following tasks for this assignment:

1. Review materials prepared by the developer team such as project pro formas, market analysis, PID feasibility analysis, etc. (to be provided through the City);
2. Conduct an initial conversation with City representatives (and potentially developer team representatives) to further understand the project and annexation proposal and the City's and developer team's interests and concerns;
3. Conduct high-level market research to confirm whether the proposed project and financial assumptions are consistent with observable market trends or represent a more speculative and thus risky development proposition;

The Economics of Land Use



Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612
510 841 9190 tel
510 740 2080 fax

Oakland
Sacramento
Denver
Los Angeles

www.epsys.com

\\EgnyteDrive\epsys\Shared\Projects\Oakland\191000s\191111_Pearson Ranch\191111Scope101\19.docx

4. Compare the property tax rate that would apply to the project at full annexation (and PID formation, if applicable) to the all-in tax rates paid by other master planned developments in the region, to understand the Pearson Ranch property's competitive position with regard to this economic factor;
5. Prepare estimates of City property taxes and sales taxes that may be generated by the project at full project buildout (i.e., not "year-by-year"), with and without any tax-relief incentives that may be requested by the developer;
6. Summarize other benefits that the project proposes to provide to the City, including amenities or facilities that exceed typical City standards or otherwise address known deficits in the area; and
7. Prepare a summary memorandum regarding the findings of the preceding tasks.

Proposed Schedule

EPS understands that time is of the essence, and that the City ideally would have this assignment completed by November 22, 2019. While EPS's ability to meet this aggressive timeline depends heavily on the quantity, quality, and timeliness of materials provided by the developer team and/or City for our review, we will make every effort to meet the requested deadline.

Proposed Budget

At this time, EPS is requesting a budget of **\$11,000** for the services described above. EPS shall not exceed this budget amount without prior authorization from the City. This figure includes our time for analysis and discussions, and may also be used for certain data acquisition charges.

Note that the figure above assumes that EPS will conduct all work from our California offices or via teleconference. If the City requests that EPS travel to Austin for any reason (e.g., to participate in person at meetings or presentations), EPS may request a budget of up to \$2,000 per day for our professional expenses (i.e., billable hours), plus up to \$1,200 per trip for our travel expenses. Our actual expenses for such travel may be lower than the amounts above (for instance, if airfare is less costly than assumed here, or if EPS can use some of a travel day to attend to other Austin area assignments), and will be billed without mark-up.

We are very pleased to have the opportunity to work with you on this interesting project. If you have any questions or suggestions regarding this proposal, please contact me at 510-841-9190 or at dsmith@epsys.com.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.



Darin Smith
Managing Principal



Amendment No. 2
to
Contract No. NA190000123
for
Economic Analysis Consulting Services
between
ECONOMIC & PLANNING SYSTEMS INC
and the
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to revise and add to the Scope of Work (SOW) Exhibit A1.

5.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 4/16/19 – 4/15/22	\$600,000.00	\$600,000.00
Amendment No. 1: Revision of SOW 4/26/19	\$0.00	\$600,000.00
Amendment No. 2: Revision of SOW and Contract Increase 8/9/19	\$200,000.00	\$800,000.00


6.0 MBE/WBE goals were not established for this contract.

7.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

9.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

 8/12/19

Printed Name: DARIN SMITH
Authorized Representative

Signature & Date:



Cyrenitha Ellis, Procurement Manager
City of Austin Purchasing Office

Economic & Planning Systems Inc
One Kaiser Plaza
Oakland, CA 94612 US

Exhibit A1- Economic & Planning Systems Inc Proposal dated 7/25/19

Revised 8/4/2014

July 25, 2019

Martin Barrera
Redevelopment Project Manager
City of Austin Economic Development Department

Sent via email to martin.barrera@austintexas.gov

Subject: Proposal for Economic Analysis Services; EPS #181181

Dear Mr. Barrera:

This letter sets forth a proposal for Economic & Planning Systems (EPS) to provide consulting services to assist the City of Austin with a variety of issues related to real estate, public finance, economic development, and housing policy. Since 1983, EPS has provided such services to public and private sector clients throughout the United States. As you know, EPS has conducted numerous assignments for nearly two decades on behalf of the City of Austin, including without limitation the following:

The Economics of Land Use



1. **Mueller Airport** Reuse Plan, Developer Solicitation, and Redevelopment Negotiations
2. **Saltillo District** Master Plan Feasibility and Financing Strategy
3. **Block 21** Community Benefits Negotiation
4. **Seaholm** Power Plant Redevelopment Negotiations
5. **Green Water Treatment Plant** Feasibility Analysis, Developer Solicitation, and Redevelopment Negotiations
6. **Homestead Preservation District** Feasibility Analysis and Other Affordable Housing Funding Strategies
7. **East 11th and 12th Street** Revitalization Strategy
8. **Colony Park** Master Plan Feasibility Analysis, Implementation Strategies, and Developer Solicitation/Negotiation
9. **[re]Manufacturing Hub** Business Plan Feasibility Analysis
10. Due Diligence on **Affordable Housing** Development and Funding Proposals
11. Due Diligence on Proposed Tenants for **City-Owned Commercial Space**
12. Due Diligence on the Need for and Fiscal Benefits of **Economic Development Incentives** for Specific Employers
13. Tax Increment Projections and Findings for **TIRZ Financing**
14. **Public Improvement District** Feasibility Review
15. Support for **Highland Mall** Redevelopment Negotiations
16. **2nd Street** Leasehold Valuation and Cash Flow Due Diligence
17. Feasibility Analysis for Rainey Street and UNO **Density Bonus Programs**
18. **Return on Investment Study** for the Public Investment in the Seaholm/2nd Street Area

Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612
510 841 9190 tel
510 740 2080 fax

Oakland
Sacramento
Denver
Los Angeles

www.epsys.com

Z:\Shared\Proposals\Oakland\181000\181181_AustinEDD_OnCall\PS_EDD_OnCallScope_072519.docx

We understand that the City is seeking to establish an on-call contract to capitalize on EPS's expertise in these areas as needed from time to time, with specific assignments to be determined in response to issues as they emerge. Based on our past experience working for the City, we know that some such assignments may require only a few hours or days, while others may be conducted over several months or longer. We anticipate that the range of services we may provide under this on-call contract may include the following, without limitation:

- **Real Estate Due Diligence** – EPS can conduct market and feasibility analysis to identify supportable uses and values for developable properties. EPS can also review and evaluate peer submittals and proposals for development, and provide analysis and recommendations during negotiation, including analysis of public investment and community benefits. Such analysis is useful in understanding development opportunities and constraints for specific projects and broader plans, communicating with community stakeholders, negotiating terms for public investment and/or community benefits, and other activities required for thoughtful community growth. EPS has provided these services for the Mueller, Salttillo, and East 11th/12th Street projects, among others.
- **Community Benefits Feasibility Analysis** – As the City considers various development outcomes such as PUDs proposed by developers or the prospective disposition of City-owned property, EPS can conduct feasibility analysis to assess the economic balance between community benefits (affordable housing, non-profit space, historic preservation, etc.) and the value conferred on the development through enhanced entitlements such as increased density, changes of use, public investment, or other factors. We have provided such services related to the Mueller, Seaholm, and Green Water Treatment Plant developments, as well as the City's density bonus policies for the UNO and Rainey Street areas.
- **Alternative/Counter Proposals** – In response to proposals for development on public land, EPS can provide analyses of alternative ownership and/or leasehold structures, such as ground lease, lease assignments, and ownership by Local Government Corporations in order to achieve sustainable, and perhaps greater, community benefit. EPS can also advise the City on possible structures to achieve City goals with prudent stewardship of public finances. We have provided such services for aspects of the Mueller redevelopment in Austin, as well as for cities, housing agencies, and transit agencies across the nation.
- **Public-Private Partnership (P3)/Master Development Agreement (MDA) Support** – EPS can assist in the preparation of solicitation documents and processes for attracting a partner for developing public properties, whether for private or public uses. Once a preferred developer is selected, EPS can assist in the negotiations of business terms by evaluating and documenting key factors such as projected cash flows, community benefits requirements, developer returns, fees, payments, fiscal impacts (municipal revenues versus service expenditures) and financial risk-sharing and profit participation. To support ongoing MDA projects, EPS can provide review, analysis, and evaluation of the financial implications of legal documents (e.g., "comfort letters"), assist in negotiation of amendments and revisions to existing development agreements and documents, and assess the accuracy of final financial and payment closeout documents. EPS also can

assist the City with forecasting or reviewing the economic impact of policies, programs, and partnerships related to economic development and redevelopment projects, including understanding the "return on investment" associated with public involvement of various sorts. EPS has provided these services for the City's Mueller, Seaholm, and Green Water Treatment Plant projects, as well as projects for Travis County and Central Health involving a mix of public and private uses.

- **Smaller Disposition Due Diligence** – Not all City property dispositions are for major redevelopment projects; some are for smaller sites or spaces. As developers pursue building on public land or tenants pursue leases of public commercial space, EPS can review the business plans, qualifications, and financial wherewithal of these prospective business partners for the City. We have provided such services with regard to several spaces in the Red River/Convention Center Garage as well as the new Main Library.
- **Public Finance Due Diligence** – EPS can assist in evaluating the need for public financing participation in a variety of projects, the potential risks and rewards of providing such assistance, and the identification of appropriate funding sources. We have provided such services for the infrastructure needs of the Mueller, Seaholm, and Colony Park projects, the Whisper Valley and WildHorse Ranch Public Improvement Districts, as well as smaller development proposals seeking financial assistance such as downtown garages, affordable housing developments, and specific tenants or employers seeking economic development incentives.
- **Housing Policy and Program Analysis** – EPS can assist in the evaluation of alternative approaches to meet the City's housing needs, including the identification and exploration of regulatory and financial tools, assessment of project- or area-specific housing needs, and balancing of economic and geographic factors pertinent to on-site inclusion versus off-site provision of affordable housing. We have provided such analysis for Mueller and other public-private redevelopment projects, as well as for the density bonus programs, and the City's consideration and creation of Homestead Preservation Districts.
- **Evaluation of Existing Projects** – EPS can assess the direct and indirect benefits (investment, jobs and wages, tax revenues, etc.) achieved from the City's existing projects and partnerships in order to evaluate the use of taxpayer's dollars and sustainability of the project. Based on these findings regarding the City's "return on investment," EPS can make recommendations and assist the City in subsequent negotiations when applicable. EPS can also identify financial and operating issues that may undermine project operations and sustainability, conduct secondary research to advise City on market-specific terms and rates, and provide research on best practices in office, retail, parking and other urban development factors. We have provided such analysis for the 2nd Street retail district for several years, and are currently conducting a broader "return on investment" study for the various projects undertaken in the southwestern quadrant of Downtown Austin since 2000.

The services described above are general and refer to the types of services EPS has provided to the City over the past 18 years. EPS's firm capabilities extend beyond the services described above, and we are willing to consider providing other services under this contract as may be appropriate, if requested by the City of Austin's Economic Development Department.

In our past assignments mentioned above, our assignments have ranged from modest "peer reviews" of technical work conducted by City staff, other consultants, or private sector interests to more expansive efforts requiring significant primary research and analysis, stakeholder engagement, and public presentations. EPS is comfortable providing whatever level of effort may be required for a given issue and assignment under an on-call contract for the City of Austin.

Based on our recent history of work for the City and our latest understanding of the various issues on which our assistance may be requested over time, including site repositioning assistance, we estimate that the work for the overall engagement is not to exceed \$800,000 inclusive of any costs for travel as may be requested by the City. For any specific assignment requested under this Master Agreement, EPS will work with the City to establish a task-specific budget and schedule of meetings and deliverables to encumber the overall authority given by this contract.

We are very pleased to have the opportunity to continue to work with the City of Austin on these important and interesting issues. If you have any questions or suggestions regarding this proposal, please contact me at 510-841-9190 or dsmith@epsys.com.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.

A handwritten signature in dark ink, appearing to read "D. Smith", written in a cursive style.

Darin Smith
Managing Principal



Amendment No. 1
to
Contract No. NA190000123
for
Economic Analysis Consulting Services
between
ECONOMIC & PLANNING SYSTEMS INC
and the
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to clarify and revise the Scope of Work (SOW) Exhibit A with Exhibit A1.

5.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 4/16/19 – 4/15/22	\$600,000.00	\$600,000.00
Amendment No. 1: Revision of SOW 4/26/19	\$0.00	\$600,000.00

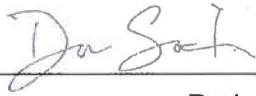
6.0 MBE/WBE goals were not established for this contract.

7.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

9.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

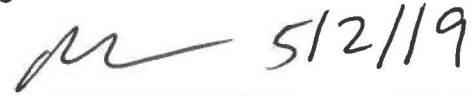
Signature & Date:



Printed Name: Darin Smith
Authorized Representative

Economic & Planning Systems Inc
One Kaiser Plaza
Oakland, CA 94612 US

Signature & Date:



Ricardo Zavala, Procurement Specialist III
City of Austin Purchasing Office

Exhibit A1- Economic & Planning Systems Inc Proposal dated 4/25/19

Exhibit A1

April 25, 2019

Martin Barrera

City of Austin, Economic Development Department

Sent via email to: Martin.Barrera@austintexas.gov

Subject: Proposal for Colony Park Development Negotiation Support;
EPS #161104

Dear Martin:

Thank you for your interest in retaining Economic & Planning Systems (EPS) to continue our assistance in the implementation of the Colony Park development project for the City of Austin. As you are aware, EPS has provided extensive services for the analysis of financing considerations for the project, and assisted in preparing solicitation documents and reviewing developer qualifications. With a preferred Master Developer having been selected and approved by City Council in October 2018, the City and the Master Developer have entered a period of intensive negotiations of the plan details as well as the roles and responsibilities of various parties. This proposal describes the tasks and level of effort EPS anticipates being required through the end of the current fiscal year (September 30, 2019).

Proposed Scope of Services

ENA Negotiations

EPS will continue to assist the City and its preferred legal counsel to draft an Exclusive Negotiation Agreement (ENA), specifying the terms of the exclusive right to negotiation on the acquisition and development of the site. The agreement will specify the tasks to be completed by the parties, deposits and cost recovery requirements, term and extension rights, and any other rights, responsibilities and obligations of the parties deemed important to specify as a condition of the exclusive agreement. Negotiation principles can be incorporated into the ENA as appropriate. EPS will assist the City in defining and negotiating the terms of the ENA. EPS has aggressively assumed that this ENA could be agreed to and approved by the City as soon as August 2019.

Engagement with City Manager's Office and Elected Officials

EPS anticipates that the ENA will need to be vetted with and approved by the City Council. EPS will assist City staff in preparing for and presenting relevant information regarding the Colony Park Master Plan, solicitation process, and ENA negotiations and results to the City Manager's Office and Councilmembers.

The Economics of Land Use



Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612
510 841 9190 tel
510 740 2080 fax

Oakland
Sacramento
Denver
Los Angeles

www.epsys.com

MDA Negotiations

Assuming the ENA is approved in August, EPS will continue to assist the City in negotiations on the Master Development Agreement (MDA). EPS anticipates that through the end of September, due diligence will be required on a variety of issues, potentially to include development costs and values, the programming and funding of infrastructure and community benefits, phasing considerations, potential refinements to the adopted Master Plan, and communications with community stakeholders. EPS anticipates that progress can be made on many of these issues in the current fiscal year, but that continuing efforts may be required over the next fiscal year or even two before the MDA can be fully negotiated and approved.

Proposed Budget

Based on past efforts for the City of Austin as well as our knowledge of the specific attributes of the Colony Park project, EPS proposes that an initial budget of **\$44,000** be established for our participation through the end of this fiscal year. This figure was derived by assuming that EPS would bill an average of six hours per week for the next 22 weeks. This level of effort would allow us to participate in biweekly negotiation meetings, including attending one such meeting each month in person (thus incurring travel expenses). In addition to those meetings, this budget allows time for additional research, analysis, and strategic guidance as may be requested by the City. EPS will draw down this budget based on requests for technical analysis, strategic advice, and meetings and communications from the City of Austin, and will inform the City when we have spent three-fourths (\$33,000) of this amount. At that time or anytime thereafter, the City and EPS may revisit whether the remaining budget appears to be adequate for the expected work, and may seek a budget augmentation if necessary for EPS to complete the work expected through the end of the fiscal year. Please note that as with past and ongoing assignments, EPS will endeavor to be efficient in our travel arrangements for this project, scheduling travel to capitalize on other assignments we have in and around Austin to make optimal use of our time and expenses.

Thank you for your consideration of EPS to undertake this interesting and important assignment. If you have any questions or suggestions regarding our proposal or qualifications for this assignment, please contact me at 510-841-9190 or dsmith@epsys.com.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.



Darin Smith
Managing Principal

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Economic & Planning Systems Inc
For
Economic Analysis Consulting Services
MA 5500 NA190000123**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Economic & Planning Systems Inc ("Contractor"), having offices at One Kaiser Plaza Oakland, CA 94612 US.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Darin Smith, Phone: 510-841-9190 , Email Address: dsmith@epsys.com. The City's Contract Manager for the engagement shall be Christine Maguire, Phone: (512) 974-7131, Email Address: Christine.Maguire@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the following tasks as enumerated in its Proposal attached hereto as Exhibit A dated March 6, 2019.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$600,000.00 for the initial Contract term for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Economic Development
Attn:	Casey Smith
Address	PO Box 1088
City, State, Zip Code	Austin Texas 78767

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Retainage.** The City reserves the right to withhold a ten (10) percent (%) retainage until completion of all work required by the Contract. The Contractor's invoice shall indicate the amount due, less the retainage. Upon final acceptance of the work, the Contractor shall submit an invoice for the retainage to the City and payment will be made as specified in the Contract. Payment of the retainage by the City shall not constitute nor be deemed a

waiver or release by the City of any of its rights and remedies against the Contractor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the Contract.

3.5 Non-Appropriation. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 Reimbursable Expenses. Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.6.1 Administrative. The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.6.2 Travel Expenses. All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.7 Final Payment and Close-Out.

3.7.1 The making and acceptance of final payment will constitute:

3.7.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.7.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 Term of Contract. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of thirty six months (36) months.

Upon expiration of the contract, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

4.2 Right To Assurance. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 Default. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the

bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 Termination For Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 Termination Without Cause. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 Fraud. Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 Insurance: The following insurance requirements apply.

5.1.1 General Requirements.

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

OR

PURInsuranceCompliance@austintexas.gov

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.2 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

5.3 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 Ownership And Use Of Deliverables. The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.5.2 Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.5.3 Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work

registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.6 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.7 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 **Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit,

or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:	To the Contractor:
City of Austin, Purchasing Office	Economic & Planning Systems Inc
ATTN: Ricardo Zavala, Procurement Specialist III	ATTN: Darin Smith, Contract Manager
P O Box 1088	One Kaiser Plaza, Suite 1410
Austin, TX 78767	Oakland, CA 94612

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that

solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 Assignment-Delegation. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 Waiver. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 Modifications. The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract

shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 **Incorporation of Documents.** Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.29 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.29.1 any exceptions to the Offer accepted in writing by the City;

7.29.2 the Supplemental Purchase Terms and Conditions;

7.29.3 the Standard Purchase Terms and Conditions;

7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

ECONOMIC & PLANNING SYSTEMS INC

CITY OF AUSTIN

By: 
Signature

By: 
Signature

Name: Darin Smith
Printed Name

Name: Ricardo Zavala
Printed Name

Title: Managing Principal

Title: Procurement Specialist III

Date: 4/16/2019

Date: 4/16/19

List of Exhibits

Exhibit A	Economic & Planning Systems Inc Proposal dated 3/6/18
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Non-Suspension or Debarment Certification, Section 805

Exhibit A

March 6, 2019

Martin Barrera
Redevelopment Project Manager
City of Austin Economic Development Department

Sent via email to martin.barrera@austintexas.gov

Subject: Proposal for Economic Analysis Services; EPS #181181

Dear Mr. Barrera:

This letter sets forth a proposal for Economic & Planning Systems (EPS) to provide consulting services to assist the City of Austin with a variety of issues related to real estate, public finance, economic development, and housing policy. Since 1983, EPS has provided such services to public and private sector clients throughout the United States. As you know, EPS has conducted numerous assignments for nearly two decades on behalf of the City of Austin, including without limitation the following:

1. **Mueller Airport** Reuse Plan, Developer Solicitation, and Redevelopment Negotiations
2. **Saltillo District** Master Plan Feasibility and Financing Strategy
3. **Block 21** Community Benefits Negotiation
4. **Seaholm** Power Plant Redevelopment Negotiations
5. **Green Water Treatment Plant** Feasibility Analysis, Developer Solicitation, and Redevelopment Negotiations
6. **Homestead Preservation District** Feasibility Analysis and Other Affordable Housing Funding Strategies
7. **East 11th and 12th Street** Revitalization Strategy
8. **Colony Park** Master Plan Feasibility Analysis, Implementation Strategies, and Developer Solicitation/Negotiation
9. **[re]Manufacturing Hub** Business Plan Feasibility Analysis
10. Due Diligence on **Affordable Housing** Development and Funding Proposals
11. Due Diligence on Proposed Tenants for **City-Owned Commercial Space**
12. Due Diligence on the Need for and Fiscal Benefits of **Economic Development Incentives** for Specific Employers
13. Tax Increment Projections and Findings for **TIRZ Financing**
14. **Public Improvement District** Feasibility Review
15. Support for **Highland Mall** Redevelopment Negotiations
16. **2nd Street** Leasehold Valuation and Cash Flow Due Diligence
17. Feasibility Analysis for Rainey Street and UNO **Density Bonus Programs**
18. **Return on Investment Study** for the Public Investment in the Seaholm/2nd Street Area

The Economics of Land Use



Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612
510 841 9190 tel
510 740 2080 fax

Oakland
Sacramento
Denver
Los Angeles

www.epsys.com

Z:\Shared\Proposals\Oakland\181000\181181_AustinEDD_OnCall\EPS_EDD_OnCallScope_030619.docx

We understand that the City is seeking to establish an on-call contract to capitalize on EPS's expertise in these areas as needed from time to time, with specific assignments to be determined in response to issues as they emerge. Based on our past experience working for the City, we know that some such assignments may require only a few hours or days, while others may be conducted over several months or longer. We anticipate that the range of services we may provide under this on-call contract may include the following, without limitation:

- **Real Estate Due Diligence** – EPS can conduct market and feasibility analysis to identify supportable uses and values for developable properties. EPS can also review and evaluate peer submittals and proposals for development, and provide analysis and recommendations during negotiation, including analysis of public investment and community benefits. Such analysis is useful in understanding development opportunities and constraints for specific projects and broader plans, communicating with community stakeholders, negotiating terms for public investment and/or community benefits, and other activities required for thoughtful community growth. EPS has provided these services for the Mueller, Saltillo, and East 11th/12th Street projects, among others.
- **Community Benefits Feasibility Analysis** – As the City considers various development outcomes such as PUDs proposed by developers or the prospective disposition of City-owned property, EPS can conduct feasibility analysis to assess the economic balance between community benefits (affordable housing, non-profit space, historic preservation, etc.) and the value conferred on the development through enhanced entitlements such as increased density, changes of use, public investment, or other factors. We have provided such services related to the Mueller, Seaholm, and Green Water Treatment Plant developments, as well as the City's density bonus policies for the UNO and Rainey Street areas.
- **Alternative/Counter Proposals** – In response to proposals for development on public land, EPS can provide analyses of alternative ownership and/or leasehold structures, such as ground lease, lease assignments, and ownership by Local Government Corporations in order to achieve sustainable, and perhaps greater, community benefit. EPS can also advise the City on possible structures to achieve City goals with prudent stewardship of public finances. We have provided such services for aspects of the Mueller redevelopment in Austin, as well as for cities, housing agencies, and transit agencies across the nation.
- **Public-Private Partnership (P3)/Master Development Agreement (MDA) Support** – EPS can assist in the preparation of solicitation documents and processes for attracting a partner for developing public properties, whether for private or public uses. Once a preferred developer is selected, EPS can assist in the negotiations of business terms by evaluating and documenting key factors such as projected cash flows, community benefits requirements, developer returns, fees, payments, fiscal impacts (municipal revenues versus service expenditures) and financial risk-sharing and profit participation. To support ongoing MDA projects, EPS can provide review, analysis, and evaluation of the financial implications of legal documents (e.g., "comfort letters"), assist in negotiation of amendments and revisions to existing development agreements and documents, and assess the accuracy of final financial and payment closeout documents. EPS also can

assist the City with forecasting or reviewing the economic impact of policies, programs, and partnerships related to economic development and redevelopment projects, including understanding the "return on investment" associated with public involvement of various sorts. EPS has provided these services for the City's Mueller, Seaholm, and Green Water Treatment Plant projects, as well as projects for Travis County and Central Health involving a mix of public and private uses.

- **Smaller Disposition Due Diligence** – Not all City property dispositions are for major redevelopment projects; some are for smaller sites or spaces. As developers pursue building on public land or tenants pursue leases of public commercial space, EPS can review the business plans, qualifications, and financial wherewithal of these prospective business partners for the City. We have provided such services with regard to several spaces in the Red River/Convention Center Garage as well as the new Main Library.
- **Public Finance Due Diligence** – EPS can assist in evaluating the need for public financing participation in a variety of projects, the potential risks and rewards of providing such assistance, and the identification of appropriate funding sources. We have provided such services for the infrastructure needs of the Mueller, Seaholm, and Colony Park projects, the Whisper Valley and WildHorse Ranch Public Improvement Districts, as well as smaller development proposals seeking financial assistance such as downtown garages, affordable housing developments, and specific tenants or employers seeking economic development incentives.
- **Housing Policy and Program Analysis** – EPS can assist in the evaluation of alternative approaches to meet the City's housing needs, including the identification and exploration of regulatory and financial tools, assessment of project- or area-specific housing needs, and balancing of economic and geographic factors pertinent to on-site inclusion versus off-site provision of affordable housing. We have provided such analysis for Mueller and other public-private redevelopment projects, as well as for the density bonus programs, and the City's consideration and creation of Homestead Preservation Districts.
- **Evaluation of Existing Projects** – EPS can assess the direct and indirect benefits (investment, jobs and wages, tax revenues, etc.) achieved from the City's existing projects and partnerships in order to evaluate the use of taxpayer's dollars and sustainability of the project. Based on these findings regarding the City's "return on investment," EPS can make recommendations and assist the City in subsequent negotiations when applicable. EPS can also identify financial and operating issues that may undermine project operations and sustainability, conduct secondary research to advise City on market-specific terms and rates, and provide research on best practices in office, retail, parking and other urban development factors. We have provided such analysis for the 2nd Street retail district for several years, and are currently conducting a broader "return on investment" study for the various projects undertaken in the southwestern quadrant of Downtown Austin since 2000.

The services described above are general and refer to the types of services EPS has provided to the City over the past 18 years. EPS's firm capabilities extend beyond the services described above, and we are willing to consider providing other services under this contract as may be appropriate, if requested by the City of Austin's Economic Development Department.

In our past assignments mentioned above, our assignments have ranged from modest "peer reviews" of technical work conducted by City staff, other consultants, or private sector interests to more expansive efforts requiring significant primary research and analysis, stakeholder engagement, and public presentations. EPS is comfortable providing whatever level of effort may be required for a given issue and assignment under an on-call contract for the City of Austin.

Per your request, EPS is able and willing to commit to provide these services for a minimum of three (3) years from the date of any contract resulting from this proposal. Based on our recent history of work for the City and our preliminary understanding of the various issues on which our assistance may be requested over time, we would request that a total budget of \$600,000 be established for these services over the three-year period, which can be used for professional services, data acquisition as necessary, and any costs for travel as may be requested by the City.

For any specific assignment, EPS will work with the City to establish a task-specific budget and schedule of meetings and deliverables, and will conduct our work to meet those expectations. For more open-ended assignments such as support for developer negotiations, we may work on a time-and-materials basis as approved and directed by City staff. If any portion of a given year's budget for these services is unused, EPS requests that the City consider "rolling over" the remainder to the subsequent year, in the event that additional service requests emerge that can thus be covered under this contract. If the City requests services that the City and EPS agree will exceed a given year's annual budget (alone or in combination with other service requests for that year, accounting for any "rolled over" funds from previous years), we may request that certain services be delayed until funds are available, or may request a budget amendment to be negotiated as needed.

We are very pleased to have the opportunity to continue to work with the City of Austin on these important and interesting issues. If you have any questions or suggestions regarding this proposal, please contact me at 510-841-9190 or dsmith@epsys.com.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.



Darin Smith
Managing Principal

City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 5 day of December, 2018

CONTRACTOR
Authorized
Signature

Economic & Planning Systems



Title

Managing Principal

City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

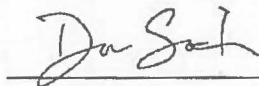
The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

Economic & Planning Systems

Signature of Officer or
Authorized
Representative:



Date: 12/5/2018

Printed Name:

Darin Smith

Title

Managing Principal



City of Austin Purchasing Office

Certificate of Exemption for Professional Services, Public Health and Safety or Other Exempt Purchase (Non-Competitive)

DATE: 03/18/2018

DEPT: Economic Development Department

TO: Purchasing Officer or Designee

FROM: Martin Barrera

PURCHASING POC: Ricardo Zavala

PHONE: 512-974-3394

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure unless the expenditure falls within an exemption listed in Section 252.022.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

The City has selected a vendor for contract award and declares the competitive solicitation procedures in Local Government Code Chapter 252.022 to be exempt for this procurement. This Certificate of Exemption is hereby executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this request:

- ☐ A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of a municipality.
- ☐ A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
- ☐ A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
- ☒ A procurement of personal, professional, or planning services
- ☐ Other exemption from Chapter 252.022: _____

2. Describe this procurement

- What it is for and why it is needed?
- Describe the following (as applicable):
 - **For Public Calamity, Public Health and Safety, Unforeseen Damage to Public Machinery or Equipment, or Critical Business Need Exemptions:**
 - Provide description of the event leading to the procurement and a business justification for this purchase.
 - What would be the impact to department operations and the community if this purchase was not made?
 - How and why this vendor was selected?

3. **For Professional, Personal, or Planning Service Exemptions:**

- Why is the vendor the most qualified to provide the services?
- Does this vendor have a history of working with the City? If so, was it on this particular service?
- Will this procurement be component of a larger service or phases of service?
- Is the vendor a City of Austin local vendor?
- Does the vendor hold an M/WBE certification with the City, a HUB certification with the State of Texas, or any other minority or women owned certifications?
- What qualifications, certifications, or specialized training does the vendor have?
- What is the impact if a contract is not secured with this particular vendor (loss of project timeline, loss of funding etc.)?
- What other vendors can provide these services and why are they not the best fit for the contract?

4. **For Other Exceptions from Chapter 252.022:**

- ☐ Explain the circumstances of the procurement.

5. **Prices were determined to be reasonable based on the following (select all that apply):**

- ☐ Prices are established under a current Cooperative contract.
Notes: At a minimum, note the contract number, contract title, cooperative entity, and government or entity who created the contract.
- ☒ Prices are the same or similar to current City contract.
Notes: **MA 7400 NA170000147 - Financial Analysis Services**
- ☐ Prices are the same or similar to current contract with another government.
Notes: At a minimum, note the contract number, title and government that created the contract.
- ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
- ☐ Prices are established by law or regulation.
Notes: At a minimum, note the legal or regulatory reference that established the prices.
- ☐ Other means of determining Price Reasonableness.
Notes: Describe any other source that was used to establish Price Reasonableness.

The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

The intention of this non-competitive procurement is to enable the Economic Development Department (EDD) to secure highly skilled and specialized consulting services in a timely manner for multiple projects for which time tends to be of the essence. When addressing emerging opportunities for Economic Development initiatives, public property leasing or development, negotiations with developers, and grant-writing, for example, EDD must move quickly and nimbly to respond to issues and opportunities. Having a consultant authorized and available for such assignments will help to ensure that such opportunities are not foregone due to a more time-consuming procurement for each instance. Economic and Planning Systems (EPS) is uniquely qualified to perform the proposed economic analysis consulting services based on their significant experience in working with the City of Austin on a variety of issues related to real estate, public finance, economic development, and housing policy.

EPS has conducted numerous assignments for over two decades on behalf of the City of Austin, including without limitation the following projects:

Mueller Airport Reuse Plan, Developer Solicitation, & Redevelopment Negotiations; Saltillo District Master Plan Feasibility and Financing Strategy; Block 21 Community Benefits Negotiations; Seaholm Power Plant Redevelopment Negotiations; Green Water Treatment Plant Feasibility Analysis, Developer Solicitation, and Redevelopment Negotiations; Homestead Preservation District Feasibility Analysis and Other Affordable Housing Funding Strategies; East 11th and 12th Street Revitalization Strategy; Colony Park Master Plan Feasibility Analysis, Implementation Strategies, and Developer Solicitation/Negotiation; [re]Manufacturing Hub Business Plan Feasibility Analysis; Due Diligence on Affordable Housing Development and Funding Proposals; Due Diligence on Proposed Tenants for City-Owned Commercial Space; Due Diligence on the Need for and Fiscal Benefits of Economic Development Incentives for Specific Employers; Tax Increment Projections and Findings for TIRZ Financing; Public Improvement District Feasibility Review; Support for Highland Mall Redevelopment Negotiations; 2nd Street Leasehold Valuation and Cash Flow Due Diligence; Feasibility Analysis for Rainey Street and UNO Density Bonus Programs; Return on Investment Study for the Public Investment in the Seaholm/2nd Street Area

EPS has proven to be effective at serving the City efficiently and effectively for over 20 years. The firm's history with and knowledge of EDD projects pre-dates many current EDD employees, providing efficient recall of key factors in past City decisions and successes. EPS also has a national practice, providing perspective on relevant best practices throughout the United States. In EDD's estimation, no other firm combines the breadth of skills, the local and national knowledge, and the history of performance that EPS has demonstrated.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
- ☒ Scope of Work or Statement of Work (if applicable)
 - ☒ Vendor's proposal/quote (if applicable)
 - ☒ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
 - ☒ Professional resumes, certifications, and/or licenses (Professional, Personal or Planning Services Only)
 - ☐ Other supporting documentation

4. Because of the above facts and supporting documentation, the City of Austin exempts this procurement from Local Government Code Chapter 252 and intends to contract with:

(Vendor Name): Economic & Planning Systems for

(Description of Procurement): Economic Analysis consulting services

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

☐ This is a one-time request for \$ _____

☒ This is a multi-term contract request for 12 (# months for base term) in the amount of \$ 200,000.00 with 2 (# of renewal options) for \$ 200,000.00 each for a total contract amount of \$ 600,000.00.

Recommended
Certification

Originator

03/18/2019
Date

Approved
Certification

Department Director or designee

3/25/2019
Date

Assistant City Manager / General Manager / Date
or designee (procurement requiring Council approval)

3/25/19
Date

Purchasing Office
Review

Authorized Purchasing Office Staff

Date

Purchasing Office
Management Review
(If required due to signature authority level)

Purchasing Officer or designee

Date